

ORRICK, HERRINGTON & SUTCLIFFE LLP
AMY K. VAN ZANT (SBN 197426)
avanzant@orrick.com
JASON K. YU (SBN 274215)
jasonyu@orrick.com
TAMMY SU (SBN 329652)
tsu@orrick.com
1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: (650) 614 7400
Facsimile: (650) 614 7401

Attorneys for Plaintiff
TRADESHIFT, INC.

KRONENBERGER ROSENFELD, LLP
KARL S. KRONENBERGER (SBN 226112)
karl@KRInternetLaw.com
JEFFREY M. ROSENFELD (SBN 222187)
jeff@KRInternetLaw.com
LIANA W. CHEN (SBN 296965)
liana@KRInternetLaw.com
RUBEN PEÑA (SBN 328106)
ruben@KRInternetLaw.com
150 Post Street, Suite 520
San Francisco, CA 94108
Telephone: (415) 955 1155
Facsimile: (415) 955 1158

Attorneys for Defendant
BUYERQUEST, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRADESHIFT, INC., a Delaware corporation,

Plaintiff,

v.

BUYERQUEST, INC., an Ohio corporation,

Defendant.

Case No. 3:20-cv-1294-RS

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,

1 that this Stipulated Protective Order does not entitle them to file confidential information under
2 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
3 will be applied when a party seeks permission from the court to file material under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
8 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
9 Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
11 as their support staff).

12 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

14 2.5 Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY
16 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

17 2.6 Disclosure or Discovery Material: all items or information, regardless of the
18 medium or manner in which it is generated, stored, or maintained (including, among other things,
19 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
20 responses to discovery in this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
22 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
23 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
24 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
25 of a Party's competitor.

26 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
27 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
28 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less

restrictive means.

2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.12 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including

1 becoming part of the public record through trial or otherwise; and (b) any information known to the
2 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from
3 a source who obtained the information lawfully and under no obligation of confidentiality to the
4 Designating Party. This order does not apply to the use of Protected Material at trial, which shall
5 be governed by a separate agreement or order.

6 4. DURATION

7 Even after final disposition of this litigation, the confidentiality obligations imposed by this
8 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
9 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
10 defenses in this action, with or without prejudice; and (2) final judgment herein after the
11 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
12 including the time limits for filing any motions or applications for extension of time pursuant to
13 applicable law.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
16 Non-Party that designates information or items for protection under this Order must take care to
17 limit any such designation to specific material that qualifies under the appropriate standards. To the
18 extent it is practical to do so, the Designating Party must designate for protection only those parts
19 of material, documents, items, or oral or written communications that qualify – so that other
20 portions of the material, documents, items, or communications for which protection is not
21 warranted are not swept unjustifiably within the ambit of this Order. For the avoidance of doubt,
22 the Designating Party may designate email productions on a document-by-document basis in the
23 first instance. To the extent the Receiving Party believes in good faith that it will be using any
24 particular email or document as an exhibit to be filed with the Court, it may request that the
25 Designating Party identify specific portions of the email or document that qualify for protection
26 within a reasonable time period based on the amount of material at issue in the request.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
28 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily

1 encumber or retard the case development process or to impose unnecessary expenses and burdens
2 on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated for
4 protection do not qualify for protection at all or do not qualify for the level of protection initially
5 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
6 mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
8 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
9 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
10 designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents, but
13 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
14 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
15 ONLY" to each page that contains protected material.

16 A Party or Non-Party that makes original documents or materials available for inspection
17 need not designate them for protection until after the inspecting Party has indicated which material
18 it would like copied and produced. During the inspection and before the designation, all of the
19 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
21 copied and produced, the Producing Party must determine which documents, or portions thereof,
22 qualify for protection under this Order. Then, before producing the specified documents, the
23 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected Material.
25 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
26 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
27 margins) and must specify, for each portion, the level of protection being asserted.

28 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the

1 Designating Party identify on the record, before the close of the deposition, hearing, or other
2 proceeding, all protected testimony and specify the level of protection being asserted. When it is
3 impractical to identify separately each portion of testimony that is entitled to protection and it
4 appears that substantial portions of the testimony may qualify for protection, the Designating Party
5 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
6 to have up to 21 days to identify the specific portions of the testimony as to which protection is
7 sought and to specify the level of protection being asserted. During that designation period of up to
8 21 days, the entirety of the testimony given at the deposition or pretrial or trial proceeding at issue
9 shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY. Only those
10 portions of the testimony that are appropriately designated for protection within the 21 days shall
11 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party
12 may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that
13 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY.”

15 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
16 other proceeding to include Protected Material so that the other parties can ensure that only
17 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
19 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
20 – ATTORNEYS’ EYES ONLY.”

21 Transcripts containing Protected Material shall have an obvious legend on the title page that
22 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
23 (including line numbers as appropriate) that have been designated as Protected Material and the
24 level of protection being asserted by the Designating Party. The Designating Party shall inform the
25 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
26 day period for designation shall be treated during that period as if it had been designated “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
28 the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
2 has engaged in this meet and confer process first or establishes that the Designating Party is
3 unwilling to participate in the meet and confer process in a timely manner.

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
5 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
6 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
7 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
8 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied
9 by a competent declaration affirming that the movant has complied with the meet and confer
10 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
11 motion including the required declaration within 21 days (or 14 days, if applicable) shall
12 automatically waive the confidentiality designation for each challenged designation. In addition,
13 the Challenging Party may file a motion challenging a confidentiality designation at any time if
14 there is good cause for doing so, including a challenge to the designation of a deposition transcript
15 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
16 competent declaration affirming that the movant has complied with the meet and confer
17 requirements imposed by the preceding paragraph.

18 The burden of persuasion in any such challenge proceeding shall be on the Designating
19 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
20 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
21 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
22 to retain confidentiality as described above, all parties shall continue to afford the material in
23 question the level of protection to which it is entitled under the Producing Party's designation until
24 the court rules on the challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
27 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
28 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to

1 the categories of persons and under the conditions described in this Order. When the litigation has
2 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
3 DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a location and in
5 a secure manner that ensures that access is limited to the persons authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
7 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
8 information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
12 Bound” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
15 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
17 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
18 to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, and
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
25 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
27 bound by the court reporter and may not be disclosed to anyone except as permitted under this
28 Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the following House Counsel for as long as they maintain their position at their respective employer:

- Amer Moorhead (Tradeshift)
- Laurel Jamtgaard (Tradshift)

(b) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(c) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

(d) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(e) the court and its personnel;

(f) court reporters and their staff, professional jury or trial consultants and mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
 2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

3 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
 4 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
 5 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 6 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets
 7 forth the full name of the Designated House Counsel and the city and state of his or her residence,
 8 and (2) describes the Designated House Counsel’s current and reasonably foreseeable future
 9 primary job duties and responsibilities in sufficient detail to determine if House Counsel is
 10 involved, or may become involved, in any competitive decision-making.

11 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
 12 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
 13 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
 14 EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating
 15 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
 16 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2)
 17 sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
 18 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
 19 identifies each person or entity from whom the Expert has received compensation or funding for
 20 work in his or her areas of expertise or to whom the expert has provided professional services,
 21 including in connection with a litigation, at any time during the preceding five years,¹ and (6)
 22 identifies (by name and number of the case, filing date, and location of court) any litigation in
 23

24
 25 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 26 party, then the Expert should provide whatever information the Expert believes can be disclosed
 27 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 28 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 connection with which the Expert has offered expert testimony, including through a declaration,
 2 report, or testimony at a deposition or trial, during the preceding five years.

3 (b) A Party that makes a request and provides the information specified in the
 4 preceding respective paragraphs may disclose the subject Protected Material to the identified
 5 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
 6 receives a written objection from the Designating Party. Any such objection must set forth in detail
 7 the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer with the
 9 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
 10 within seven days of the written objection. If no agreement is reached, the Party seeking to make
 11 the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil
 12 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission
 13 from the court to do so. Any such motion must describe the circumstances with specificity, set
 14 forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is
 15 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any
 16 additional means that could be used to reduce that risk. In addition, any such motion must be
 17 accompanied by a competent declaration describing the parties' efforts to resolve the matter by
 18 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the
 19 reasons advanced by the Designating Party for its refusal to approve the disclosure.

20 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 21 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
 22 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material
 23 to its Designated House Counsel or Expert.

24 8. SOURCE CODE: The parties do not currently anticipate the discovery of source code in this
 25 matter. To the extent such discovery becomes necessary, the parties will meet and confer on a
 26 protocol to address the inspection of such source code.

27 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 28 LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that

1 compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification shall include
 4 a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 6 the other litigation that some or all of the material covered by the subpoena or order is subject to
 7 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 9 Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served with the
 11 subpoena or court order shall not produce any information designated in this action as
 12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
 13 determination by the court from which the subpoena or order issued, unless the Party has obtained
 14 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
 15 seeking protection in that court of its confidential material – and nothing in these provisions should
 16 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
 17 directive from another court.

18 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 19 LITIGATION

20 (a) The terms of this Order are applicable to information produced by a Non-
 21 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 22 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this
 23 litigation is protected by the remedies and relief provided by this Order. Nothing in these
 24 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to produce
 26 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement
 27 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

28 1. promptly notify in writing the Requesting Party and the Non-Party that some
 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the

1 court.

2 13. MISCELLANEOUS

3 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
4 seek its modification by the court in the future.

5 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
6 no Party waives any right it otherwise would have to object to disclosing or producing any
7 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
8 Party waives any right to object on any ground to use in evidence of any of the material covered by
9 this Protective Order.

10 13.3 Filing Protected Material. Without written permission from the Designating Party or
11 a court order secured after appropriate notice to all interested persons, a Party may not file in the
12 public record in this action any Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
14 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
15 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
16 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
17 to protection under the law. If a Receiving Party's request to file Protected Material under seal
18 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
19 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
20 instructed by the court.

21 14. FINAL DISPOSITION

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
23 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
24 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
25 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
26 the Protected Material is returned or destroyed, the Receiving Party must submit a written
27 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
28 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected

1 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
 2 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of
 3 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
 4 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 5 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
 6 and expert work product, even if such materials contain Protected Material. Any such archival
 7 copies that contain or constitute Protected Material remain subject to this Protective Order as set
 8 forth in Section 4 (DURATION).

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: May 27, 2020

/s/ Amy K. Van Zant

AMY K. VAN ZANT
 Attorneys for Plaintiff
 TRADESHIFT, INC.

13 DATED: May 27, 2020

/s/ Karl Kronenberger

KARL S. KRONENBERGER
 Attorneys for Defendant
 BUYERQUEST, INC.

17 ATTESTATION

18 I attest that, under Civil Local Rule (5-1)(i)(3), I have obtained concurrence in the filing of
 19 this document from all Signatories.

20 DATED: May 27, 2020

/s/ Amy K. Van Zant

AMY K. VAN ZANT
 Attorneys for Plaintiff
 TRADESHIFT, INC.

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 DATED: _____

Judge Richard Seeborg
 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of _____ **[insert
formal name of the case and the number and initials assigned to it by the court]**. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]